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March 7, 1995

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**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Re: Comments of the Office of the Commissioner  
of Baseball in Response to the Notice of  
Proposed Rule Making in MM Docket No. 94-123

Dear Mr. Caton:

Enclosed for filing, on behalf of the Office of the Commissioner of Baseball ("Baseball"), please find an original and nine copies of Baseball's Comments in response to the Notice of Proposed Rule Making in In re Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, MM Docket No. 94-123, FCC 94-266 (released Oct. 25, 1994).

Thank you for your attention to this matter.  
Please call the undersigned at 202/872-3738 if you have any questions with respect to this filing.

Sincerely,



Carl A. Fornaris

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re

Review of the Prime Time Access  
Rule, Section 73.658(k) of the  
Commission's Rules

MM Docket No. 94-123

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TO: The Commission

**COMMENTS OF  
THE OFFICE OF THE  
COMMISSIONER OF BASEBALL**

The Office of the Commissioner of Baseball, on behalf of the twenty-eight clubs engaged in the sport of major league baseball ("Baseball"), submits the following comments in response to the Commission's Notice of Proposed Rulemaking, FCC 94-266 (released October 25, 1994) (the "Notice").

**SUMMARY**

The purpose of this proceeding is to determine whether the Commission should retain, modify or abolish the Prime Time Access Rule ("Rule"), 47 C.F.R. § 73.658(k). Among its other effects, the Rule prohibits three broadcast networks (ABC, CBS and NBC) from commencing the telecast of a live sports event during the prime time access period, i.e., 7:00-8:00 p.m. Eastern and

Pacific time, 6:00-7:00 p.m. Central and Mountain time ("Access Period").

Baseball believes that the Commission should remove its prohibition on network telecasts of live sports events during the Access Period. As the Commission has recognized, there is a "need for network scheduling flexibility where live sports events are involved . . . ." National Broadcasting Co., 83 F.C.C.2d 264, 265 (1980). Sports interests should have that flexibility in scheduling telecasts over ABC, CBS and NBC -- just as they do in scheduling telecasts over all other video distributors with which these networks must now compete. Levelling the playing field in this manner will help promote the availability of live sports programming to the maximum number of viewers of "free" national television.

#### DISCUSSION

The Prime Time Access Rule prohibits ABC, CBS and NBC affiliates in the top 50 markets from devoting more than three of the four prime time hours to certain network and non-network programs. The Rule does exempt some sports telecasts; but the exemption applies to a narrow category of programming only -- international sports events, New Year's Day college football games and events that take longer than expected and thus "run over" into the Access Period. See 47 C.F.R. §§ 73.658(k)(4), (6). A

network may also seek a waiver of the Rule for sports telecasts. The Commission, however, has granted such waivers only where special sports events and unique circumstances are involved. See National Broadcasting Co., 83 F.C.C.2d at 265 (Superbowl); Station WOXI-TV, 38 F.C.C.2d 161, 161 (1972) (Thanksgiving Day college football game).

When the Rule was adopted twenty-five years ago, the three broadcast networks and individual broadcast stations were the only outlets for live sports programming. The situation today, however, is quite different. Major league baseball clubs now present more than 3,000 telecasts of their games each season over a wide variety of distribution services -- including local broadcast stations, superstations, regional broadcast networks, regional cable networks and national cable networks, as well as national broadcast networks subject to the Rule. Other professional sports interests also make substantial use of the different video outlets to distribute telecasts of their games. See generally Inquiry into Sports Programming Migration: Final Report in PP Docket No. 93-21, 9 FCC Rcd. 3444 (1994) ("Sports Migration Report").

FCC rules do not restrict the scheduling of sports telecasts over any video distributor other than ABC, CBS and NBC. Consequently, sports interests and

most video distributors typically are able to determine telecast start times that, in their judgment, promote common objectives -- such as maximizing the potential audience for the telecasts.

Sports interests often arrange with video distributors to commence telecasts of sports events during the Access Period.<sup>1</sup> However, they do not have the same scheduling flexibility when dealing with ABC, CBS and NBC. As a result of the Prime Time Access Rule, these networks are effectively barred from televising baseball games or other live sports events during the Access Period. Thus, if Baseball or another sports interest televises a night game over ABC, CBS or NBC, the telecast of that game may not start, by FCC regulation, prior to 8:00 p.m. Eastern time (or 8:00 p.m. Pacific time for telecasts in that time zone). This lack of scheduling flexibility can prevent sports interests and the broadcast networks from maximizing the attractiveness of live sports programming to affiliates and fans alike.

For example, last season Baseball's telecasts over ABC and NBC began at 8:00 p.m. Eastern time and lasted, on average, 3 hours and 10 minutes. Consequently,

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<sup>1</sup> ESPN, for example, normally begins its Wednesday evening baseball telecasts at 7:30 p.m. Eastern time. Likewise, nationally-delivered superstations, such as WTBS (Atlanta, GA) and WWOR (Secaucus, NJ) routinely commence their coverage of night games played in the Eastern time zone at that time.

these telecasts often delayed affiliate newscasts and late-night programming (a matter of concern to many affiliates); they may have been less accessible to many children who Baseball seeks to cultivate as fans; and (in specific instances) they may have generated a smaller total audience than telecasts with an earlier start time. The Prime Time Access Rule, however, prevents Baseball from responding to such concerns by commencing telecasts earlier than 8:00 p.m. Eastern time.

As the Commission is aware, an increasingly smaller percentage of American households has chosen to view major league baseball on free over-the-air network television; consequently, there has been a significant reduction in the number of major league baseball telecasts presented over the national broadcast networks. See Sports Migration Report, 9 FCC Rcd. at 3453, ¶ 33. This trend has been a matter of concern not only to Baseball but to the Congress and Commission as well. See Sports Migration Report; Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 26, 106 Stat. 1460, 1502 (1992); H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 125 (1992).


Baseball has taken a number of significant steps that are designed to enhance viewer interest in its network broadcasts. See Sports Migration Report, 9 FCC Rcd. at 3451-53 ¶¶ 28-33. Among other things, all of the

baseball games broadcast over the networks are now played during the evening, when the largest potential audiences are available. In addition, Baseball televises multiple games at the same time so that telecasts of the greatest interest to a particular region can be delivered to the affiliates in that region. However, FCC rules that restrict scheduling flexibility can only undermine the efforts of Baseball and other sports interests to ensure that the greatest number of fans have access to live sports programming on free network television. This, in turn, is contrary to the diversity objectives that supported the adoption of the Prime Time Access Rule.

**CONCLUSION**

For the reasons discussed above, Baseball urges the Commission to repeal its prohibition against network telecasts of live sports programming during the Access Period.

Respectfully submitted,

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March 7, 1995